EXHIBIT D

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ASSURED GUARANTY MUNICIPAL CORP., f/k/a FINANCIAL SECURITY ASSURANCE INC., Plaintiff,	)
vs.	) Case No. 11-CV-2375 (JSR)
FLAGSTAR BANK, FSB; FLAGSTAR CAPITAL MARKETS CORPORATION; and FLAGSTAR ABS, LLC, Defendants.	)

DEPOSITION OF DAVID BEARD

New York, New York

November 1, 2011, 2011

Reported By:

CATHI IRISH, RPR, CLVS, CCR

to provide this type of guaranty insurance?

A. It's generally an issuer of securities.

Q. So to -- is it fair to say that there is an issuer of securities and they retain the bond insurer here, FSA, to provide insurance insure the timely payment of interest and principal to bondholders?

A. Timely payment of interest and ultimate principal or modified Freddie Mac principal schedule.

Q. And with that minor clarification, you agree that's an --

A. Yes.

Q. -- accurate statement?

Okay. Not to be a pain in the neck but just let me finish my question and then you can answer after me, just to make sure that we're not -- we're getting an accurate transcription. Hard to do, I know, especially when you know what the question is going to be.

The -- you said that in the corporate -- you worked in the corporate finance group of FSA; is that correct?

A. That's correct.

BEARD

Q. So that would include residential mortgages?

A. That's correct.

Q. Like a house mortgage is what we're talking about?

A. Uh-huh.

Q. And when you say that FSA wrapped residential mortgage-backed securities, just to be clear, the wrap is the concept of providing the insurance that we talked about earlier, correct?

A. Yes.

Q. Okay. When you say it was your responsibility to seek opportunities to originate wrap opportunities for mortgage-backed securities, what was it -- what does that actually mean? What was your job responsibility? What did you do?

A. We engaged issuers. We discussed benefits of wrap. We facilitated the underwriting of the security issuance.

Q. When you say you engaged an issuer, what does that mean?

A. We asked for their business.

Q. In the period of -- well, who is FSA's primary competitors, let's say in the time period

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2004 through early 2007?

A. MBIA and AMBAC.

Q. So those two companies, MBIA and AMBAC, were in the same business as FSA of wrapping mortgage-backed securities?

A. Yes, they wrap mortgage-backed securities.

Q. Well, when you say -- I just want to make sure I understand when you say the primary competitors of FSA in this time period of 2004 through early 2007 was MBIA versus AMBAC, what do you mean that they were the primary competitors?

MR. BUCHDAHL: Not MBIA versus AMBAC.

MS. RENDON: Did I say versus AMBAC? Why don't I restate the question. Thank you for catching that.

BY MS. RENDON:

Q. When you say that FSA's primary competitors were MBIA and AMBAC, what did you mean by that, sir? And again, I'm talking the time period of 2004 through early 2007.

A. I don't know how I can elaborate on that. They were our primary competitors.

Q. And that's because both MBIA and AMBAC

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Q. Okay. So you have no knowledge whether or not FSA --

A. I just --

MR. BUCHDAHL: Mr. Beard, give it time even if a question is repeated, wait until you hear the whole question.

THE WITNESS: Okay, sorry.

BY MS. RENDON:

Q. So my question is: Do you have any understanding, understanding you weren't tracking the various bond insurers, do you have any understanding as to whether FSA had a AAA at the time it was acquired by Assured Guaranty?

A. I don't know. I'd have to look it up.

Q. Going back to the time period of 2004 through 2007, so I'm going to focus on that time period. We were -- and you were describing for me FSA, MBIA and AMBAC being competitors of one another in the world of wrapping residential mortgage-backed securities.

Did FSA specialize in first time issuers or have a focus on working with first time issuers?

A. We worked with repeat issuers and first

has a lot of experience. I'm just trying to make sure when I'm going back and explaining it for folks who may not appreciate this, they understand what you mean with some of your shorthand.

When you say that FSA would go in and pick a sample, do you mean that FSA would go in and pick a sample of mortgages for purposes of having a firm reunderwrite those mortgages?

A. No, not exactly. We would select -- we would generally select a random sample from the tape which was a listing of each loan that was proposed -- that was in the portfolio and its major characteristics.

Q. And then what?

A. And then we would send it to the underwriters for review.

Q. You'd send the tape to the underwriters for review or --

A. We would request the loan files which were generally reviewed on site, sometimes electronically.

Q. And then -- and when you would say we would request, so FSA would take a random sample -- using the loan tape, FSA would select a

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Is that because if the structure didn't provide coverage for the estimated losses, it would be FSA's responsibility to cover those losses?

A. No.

Q. What was the purpose of understanding the loss estimate then?

A. To assure that there was a multiple of loss coverage.

Q. So maybe you can walk me through this on a more elementary basis. I would appreciate it.

A. The objective was to make sure that there was adequate structure so that there weren't scenarios where you had to pay a claim. So we tested the first dollar claim and that was the amount of coverage that was provided, and the objective was to avoid any scenarios where you didn't have a cushion two, three times the loss expectations.

MS. RENDON: Can you read that last answer back to me, please?

(Record read.)

MS. RENDON: Can I just ask a couple

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more questions and then we'll take a short break?

MR. BUCHDAHL: Sure.

BY MS. RENDON:

Q. I wanted to make sure I understood.

So is it your testimony, Mr. Beard, that effectively what FSA was trying to accomplish through this transaction due diligence was to understand the collateral, understand the loss potential of the collateral, and then engage in insuring that there was structuring of the transaction to create cushions within the transaction so that FSA wouldn't have to pay a claim?

A. Yes.

MS. RENDON: Sure, we can take a short break.

THE VIDEOGRAPHER: The time is 9:37 a.m., November 1, 2011. This is the end of tape 1. We're off the record.

(Recess taken from 9:38 a.m. to 9:45 a.m.)

THE VIDEOGRAPHER: The time is 9:45 a.m., November 1, 2011. This is tape 2.

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ability to approve or disapprove of a transaction?

A. I don't know.

Q. You said earlier that you were a director in the corporate finance group, correct?

A. Uh-huh.

Q. And you said that you were -- part of your responsibilities was originating these types of transactions we've been talking about?

A. Uh-huh.

Q. What more specifically, maybe you can talk to us about what your role was kind of from the beginning to the closing of a transaction, can you give us a better idea of what your individual role was on transactions that you helped originate?

A. Sure. Generally, we would, you know, learn of an impending issuance or receive a call from an investment banker or receive a call from an issuer that indicated that there was business coming to market. Sometimes we would, you know, be in competition with another firm for the -- you know, because of -- for a wrap. We would discuss the parameters of the transaction typically with the investment banker who was leading the deal.

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We would -- if their expectations for attachment point and the profile of the deal made sense, we would do a number of things, among which would be getting the tape, getting the detail of the portfolio, and some understanding of what the structure might look like. And you know, that would be refined to its final form over a period of weeks.

If we made an initial proposal and it was accepted, we would perform additional work that involved, you know, the sampling, the loan file, the deal structure, and ultimately writing a credit committee memo. We wouldn't write a credit committee memo if we didn't want to do the deal but if we decided we wanted to wrap the transaction, we would prepare and present a credit committee memo describing the transaction.

Q. And then -- thank you. That was helpful.

And that credit committee memo, to whom was it presented, the credit committee?

A. Uh-huh.

Q. And who in this time period of 2004 through early 2007 sat on the credit committee?

BEARD

Williams might have been involved. It just depends on the discussion.

Q. What was Mr. Williams's role at FSA during this time period during 2004 through 2007?

A. He was responsible for the mortgage-backed group.

Q. And when you say he was responsible for that group, is there any more specifics you can make?

A. He was -- he was -- he was -- I believe he was a managing director responsible for the mortgage-backed group.

Q. As managing -- was Mr. Williams effectively your boss?

A. Uh-huh.

Q. Did you work closely with Mr. Williams during the course of your time at FSA?

A. Yes.

Q. When you say it was his responsibility as managing director for the MBS group, what did you understand his responsibilities included?

A. This is suppositions to some extent because I didn't have that job but he was responsible for, you know, reviewing transactions,

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less risky on first liens?

A. Well, your collateral interest is subordinated to the first lien.

Q. For folks who are lay people, what do you mean by that?

A. I mean the first lienholder has first claim on the proceeds of the sale of the property.

Q. What happens in a market in your mind where property value decreases; is that an environment that's particularly risky to a second lien position?

A. Because the second lien is behind the first lien, any decline in value of the property, whether it relates to the particular property itself or the market at large, reduces the potential for recovery from the -- from the property value.

Q. And that would be -- in effect, that would be magnified on a second lien position as compared to the first lien position?

A. Yes.

Q. And that's because the second lien is subordinate to the interests of the first lien?

A. That's correct.

BEARD

on in the -- in Michigan.

Q. Why would that be a concern to you or FSA?

A. If it affected the portfolio in terms of the, you know, employment and that affects the ability to pay, that would be a concern.

Q. So if a mortgage went into the portfolio and the borrower were to lose his job, that could cause the borrower to default on the loan, correct?

A. That's correct.

Q. And that would be a loss that ultimately FSA may have to pay on, correct?

A. The -- you know, any losses on the portfolio could contribute to, you know, lower cushion or potential claim.

Q. And I think I understand it but just to put it on the record, when you say could result in a lower cushion, in other words, there are mechanisms in the securitization structure that provide cash flows so -- that could be available so that FSA wouldn't have to pay a claim, correct?

A. There's -- there's -- there's current cash and other forms of credit enhancement,

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curtains of reserve, and other interests that conspire to create the credit enhancement below the bonds that are guaranteed.

Q. So just to be clear, it's not as though automatically just because a borrower defaults on a loan, FSA automatically has to pay a claim, correct?

A. That's correct.

Q. In other words, it's not this kind of one-for-one type deal where borrower defaults, FSA has to pay; that's not correct?

A. That's -- it's -- that's right, it's not correct.

Q. My statement was correct?

A. Sorry, that's fine.

Q. It's left, right?

A. Yeah.

Q. Rather FSA's role is to ensure that there is sufficient cash flow in the revenue stream of the securitization, and if there's not, then FSA would have to pay into the securitization structure?

A. The combination of excess interest, reserves and other forms of credit enhancement

BEARD

represent the structure and the cushion against a claims payment.

Q. So in other words, it's a more complicated equation, one has to look at the overall cash flows of the entire structure in order to both project potential claims FSA may have to pay, and even in the reality of the living structure itself of what have FSA will have to pay?

A. That sounds about right, yeah.

Q. And the kinds of other -- the structural cushions that we've talked about, does that include things like an excess spread account?

A. Yes.

Q. What is an excess --

A. Well, was there an excess spread account? An excess spread account would capture excess spread in a reserve so the interest, the interest cash flow less monthly costs and expenses, fees, you know, servicing fees, guaranty fees, trustee fees and bondholder interests, not necessarily in that order, what's left at the end of that is excess interest, and depending on the structure, the excess interest could be captured

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in a reserve or be used to pay down senior bonds in order that essentially the existing reserve gets to a higher percentage.

Q. So in other words, an excess spread reserve can function as effectively interest money, excess interest money coming in on any particular month being put aside for a rainy day?

A. As credit enhancement.

Q. What about overcollateralization? Are you familiar with that term?

A. Yes.

Q. What does that mean?

A. Overcollateralization would be having collateral, loan collateral in excess of the bonds issued.

Q. And why would that provide structural protection to, for instance, FSA?

A. Because if everything -- if you had a higher bond balance and a higher interest rate than the bond balance and the bond interest rate, there would be additional -- that provides for additional cushion.

Q. What about the concept of subordination, is that another structural

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mechanism to try to build additional cushion into the securitization structure for the benefit of FSA?

A. In HELOCs, it can be.

Q. What about -- when you say in HELOCs it can be, what do you mean?

A. Well, there's a couple of elements in that. New advances could be made by the issuer and which would be subordinated. There could be an issuer interest that is say 5 or 10 percent of the transaction, which is subordinated to the senior bondholders, so that was what that subordination would mean, would mean to me anyway.

Q. Are you familiar with a term liquidation loan loss amount?

A. Yes, I believe I am.

Q. Lucky man that you are.

What do you understand liquidation loan loss amount to mean?

A. Generally I would think the liquidation loan loss amount would be the amount of loss to a trust upon the completion, upon the exercise of repossession, foreclosure, collection efforts on the part of the servicer.

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whether it happened in any kind of large measure.

BY MS. RENDON:

Q. So if it were level 2, it would be okay for those to be included in the transaction from FSA's point of view?

A. Yes.

MR. BUCHDAHL: Objection to form.

BY MS. RENDON:

Q. Because effectively whatever's wrong with them isn't significant or material?

MR. BUCHDAHL: Objection to form.

THE WITNESS: It wouldn't be unusual to -- we didn't -- we didn't -- we weren't kicking loans out of the pool, the sample pool. We were really just trying to assess whether the sample generally was representative of what we would expect to see in a -- in the transaction.

BY MS. RENDON:

Q. And if there were level 2 -- if there were level 2 type loans that were represented within the transaction, that would not be a reason in FSA's mind not to proceed with the transaction?

BEARD

A. That's correct.

Q. As compared to level 3, that might be more problematic?

A. If they appeared in declining percentages, the level 3 should be small. Level 2 could be not insignificant but wouldn't create a concern until it got to be really quite large.

Q. I see. And level 1, of course --

A. Level 1 is in compliance, so that's kind of what you would expect.

Q. Okay. And did FSA typically have -- strike that.

So just to go back to our geography, this is all being determined as part of the loan level review before FSA has committed to the transaction, correct?

A. That's correct.

Q. If there were, let's say, level 3 assets, did FSA have the right to say we don't want that particular loan in our transaction?

MR. BUCHDAHL: Objection to form.

THE WITNESS: There was no commitment so any -- we could certainly think about that. It was a question of whether it was

BEARD

being said here?

A. No, it's not.

Q. Okay. What is your understanding of, just to make sure I understand, of what's being said here?

MR. BUCHDAHL: Objection to form.

THE WITNESS: Doug's referring to the market environment in '96 and '97.

BY MS. RENDON:

Q. Do you have -- separate and distinct from this document, do you have any belief that FSA had stressed the market environment going into 2005 for second lien -- the second lien mortgage market?

MR. BUCHDAHL: Objection to form.

THE WITNESS: I believe we stressed every transaction we looked at in terms of the analytics that are presented in the credit committee memo.

BY MS. RENDON:

Q. Okay. It says in the -- if you go down two -- two more paragraphs, it starts out with Mr. Newman inquired about the status of diligence.

Do you see that?

BEARD

transaction, and 3.1 was right in line with what we would expect to get.

BY MS. RENDON:

Q. And what is it that you're trying to -- what events or what phenomena are you trying to get safety from by creating such a multiple?

MR. BUCHDAHL: Objection to form.

THE WITNESS: You know, all the risks associated with the portfolio performance.

BY MS. RENDON:

Q. And I'm not trying to be a pain in the neck but what kinds of risks would those typically be that you create a 3.1 multiple?

A. Higher losses.

Q. Resulting from what?

A. From wherever they came.

Q. What would be the kinds of things that would create losses?

A. Everything potentially could create losses, job loss, job, you know, curtailment, medical problems, accidents, you know, there's a whole array of factors.

Q. Life events basically?

A. Life events.

BEARD

Q. Of a borrower?

A. Right.

Q. Post-closing of the transaction?

A. Correct.

Q. What about adverse economic circumstances like in the state economic or the federal economy?

A. They affect borrowers, too.

Q. So that 3.1 multiple is also designed to help cover those types of events?

MR. BUCHDAHL: Objection to form.

THE WITNESS: The multiple is there to cover in the risk that the projection is not accurate.

MS. RENDON: Let me -- I think we're about to run out of time. Do we have a couple more minutes left?

THE VIDEOGRAPHER: You've got three minutes.

BY MS. RENDON:

Q. Just to run out the notes, right beneath that on the same page that we were just looking at, it says summary of the notes. Do you see that kind of in the top left there?

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suggesting expected losses in the 10 percent arena, how is it that FSA ended up utilizing an expected loss rate of only 4.32 percent?

A. You go to the next page.

Q. What does that tell us on the next page?

A. There's three different data points. Calculated a FICO based model of expected losses. Looked at a historical estimation of losses which could have been, and I don't recall in this deal whether it was based on the genre, whether it was bank loss or Flagstar loss. And then the model expectational loss. So take the average of those to get 4.32.

Q. Was -- if the 10 percent had been used as compared to this 4.32 percent, just for the sake of thinking it through, that would have created -- and that were the base expected loss number, that would have created a much bigger cushion for -- strike that.

If the 10 percent expected loss number had been utilized by FSA and the structure had been created around a 10 percent expected loss number as compared to a 4.32 percent expected loss

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number, that would have created a lot more cushion for FSA, correct?

A. No.

MR. BUCHDAHL: Objection to form.

BY MS. RENDON:

Q. Why do you say no?

A. AMBAC would have done the deal. I mean it was not -- it wouldn't have been -- it just wouldn't happen.

Q. What do you mean by that?

A. It would have been -- it would have been too expensive.

Q. You mean Flagstar wouldn't have accepted those terms?

A. Right, and that wasn't our methodology.

Q. But when you say AMBAC would have done the deal, what you mean is someone would have -- another competitor would have come in and come in lower than you guys?

A. Or it wouldn't have happened.

Q. Or it wouldn't have happened?

A. So to conjecture of the 10, that wasn't one of the things on the table.

Q. Was that something if -- well, strike

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A. This is -- I believe this is the results of a file review that Bohan did.

Q. And Bohan would have been retained by FSA for that purpose?

A. Could have been. I don't recall specifically. Would have been retained by either -- I would expect Bohan was retained by us but I don't recall specifically.

Q. Either way, it would appear from this memo that FSA got the benefit of the loan file diligence that Bohan did; is that correct?

MR. BUCHDAHL: Objection to form.

THE WITNESS: Yes, we had the results of Bohan's analysis.

BY MS. RENDON:

Q. And, in fact, that's what the first line under section 3 would indicate, right, RMG, and that's the risk management group within FSA; is that correct?

A. Uh-huh.

Q. Has received the results from Bohan's due diligence on the 250 loans reviewed in October. It says there a hundred percent of the sample was randomly selected and the grades of the